

SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 843-720-5270

463 KING STREET, SUITE B
CHARLESTON, SC 29403-7204

Facsimile 843-414-7039

October 20, 2017

Via Mail and FOIAonline

U.S. Environmental Protection Agency
Regional Freedom of Information Officer
U.S. EPA, Region 4
AFC Bldg, 61 Forsyth Street, S.W., 9th Flr (4PM/IF)
Atlanta, GA 30303-8960

Re: FOIA - Congaree River Tar-Like Material

To Whom It May Concern:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, the Southern Environmental Law Center ("SELC") submits this request on behalf of the Congaree Riverkeeper to the United States Environmental Protection Agency ("EPA") for public records. We ask that the EPA produce any public records in its possession related to or concerning:

- (1) The tar-like material that exists in a section of the Congaree River in Columbia, South Carolina between the Gervais and Blossom Street bridges;
- (2) SCANA Corporation's proposed plans to remediate the site; and
- (3) Any permit application related to the site, including a Joint Application and Pre-Construction Notification for authorization of a capping project to under Nationwide Permit 38 (USACE Project Number: SAC-2011-01356-6NO).

We ask that the EPA produce all records from January 1, 2013 to the date of the agency's search pursuant to this request.

For the purpose of this request, the term "records" includes all written, printed, recorded or electronic materials, communications, correspondence, memoranda, notations, copies, diagrams, charts, books, papers, maps, photographs, data, tables, spreadsheets, formulas, directives, observations, impressions, contracts, letters, messages, and mail in the possession, custody, or control of the EPA. This request includes, but is not limited to: internal and interagency meeting notes; electronic mail messages (whether sent, received, deleted, etc., including attachments), telephone logs, notes, or other records of communications; and comments submitted by the public and by state and federal agencies. Our request also specifically includes responsive documents and records prepared by, created by, or in the possession, custody, or control of the EPA's agents, contractors, and subcontractors.

In addition to making responsive documents available for request, should you determine that certain documents are responsive to this request and choose not to produce them on the basis of any claimed privilege or exemption from disclosure, we request that you produce a detailed list of those documents including the data of the document; the authors and recipients; the subject matter of the document; and the basis for the claimed exemption or privilege from disclosure. Further, where a document contains specific information that you claim is exempt or privileged, we request that you simply redact the information so claimed and produce the document in redacted form. The redacted information should be included in the list just described.

SELC is requesting photocopies without charge, or at a reduced charge, because reduction or waiver of fees would be in the public interest. The public interest standard of the fee waiver provision of the FOIA should be “liberally construed” in favor of waivers. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987); *Pederson v. Resolution Trust Corp.*, 847 F. Supp. 851, 855 (D. Colo. 1994); *Etlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984). The goal of the statute is to avoid the “roadblocks and technicalities which have been used by various Federal agencies to deny waivers . . .” *Pederson*, 847 F. Supp. at 855.

This waiver request meets the criteria set forth in 40 C.F.R. § 2.107(l). SELC and the Congaree Riverkeeper intend to use the information obtained through this request to inform the general public about the EPA’s role in authorizing a project to place a cap over tar-like materials in the Congaree River in Columbia, South Carolina under Nationwide Permit 38. This project is of substantial public importance and has been the subject of multiple news reports and public meetings.¹ The disclosure of the requested materials would be in the public interest because it is likely to contribute significantly to public understanding of EPA’s activities in relation to the environmental review and permitting of the project, and of the interactions between EPA and the Corps regarding permitting for this project. This will provide significant new information regarding government operations that is not otherwise available, as the request covers otherwise unavailable communications and other internal agency documents.

SELC is a 501(c)(3) non-profit organization with over 25 years of experience disseminating public information regarding environmental and EPA-related issues. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Lawyers at SELC are regularly interviewed by the media to explain their work and its significance and intend to communicate directly with the media regarding the EPA’s and Corps’ role in authorizing this project to proceed under a nationwide permit. SELC also plans to use press releases, social media, and public comment letters to disseminate information gathered from the FOIA request, and intends to publicly distribute this information via its quarterly print newsletter delivered to 16,000 people and its monthly electronic newsletter that reaches approximately 11,000 people. SELC and the Congaree Riverkeeper also intend to disseminate the information gathered through this request to the general public through their respective organizational websites. SELC’s website, southernenvironment.org, contains documents generated by SELC for the specific purpose of educating the public on particular issues. The SELC website has an average monthly traffic of approximately 15,000 unique visitors. SELC and the Congaree Riverkeeper have previously disseminated public information

¹ *See, e.g.*, <http://www.thestate.com/news/local/article179911486.html>.

regarding this project via their respective websites.² SELC staff members also educate the public by speaking at conferences and other public meetings about environmental and natural resource issues in the Southeast and will actively seek opportunities to educate the public about this project.

A fee waiver clearly will benefit the general public through increased notice and understanding of the operations of the government. SELC further certifies that disclosure of the information sought is not primarily in the commercial interest of the requester.

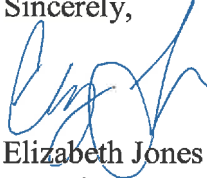
Should our request for reduced or waived fees be denied, we are prepared to bear the reasonable costs necessary to fulfill this request, although we ask that you contact us prior to fulfilling the request should the fees exceed \$100.

FOIA directs a responding agency to make a "determination" on any request within twenty working days of receipt. 5 U.S.C. § 552(a)(6)(A). Because of the time-sensitive nature of our request, we specifically request that you comply with the statutory deadline. Should our request be denied, we ask that you inform us of the grounds for denial and the specific administrative appeal rights that are available. *Id.*

In addition, because the volume of records responsive to our request may be large, we are willing to work with your agency to minimize the work necessary to respond. We are willing to discuss ways to facilitate your response to our FOIA request.

Please feel free to contact our office by phone with any questions or to plan a convenient time and place for document review. Thank you for your prompt attention to this matter.

Sincerely,



Elizabeth Jones
Associate Attorney
ejones@selcsc.org
463 King Street, Suite B
Charleston, SC 29403-7204
(843) 720-5270

EAJ/amc

² See, e.g., <http://congareriverkeeper.org/search/node/tar>.